IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 5397 OF 2007

Seema Pankaj Vaghela ....Petitioner
V/s
Pankaj Mangaldas Vaghela ....Respondent.

Mr.P.M.Mokashi, Adv. For the petitioner.

Mr.A.C.Patki, Adv. For the respondent.

CORAM: A.P.DESHPANDE, J.
29/8/07

PC:

Rule. Rule made returnable forthwith.

Taken up for final hearing by consent of both the parties.

The present petitioner is wife whereas the respondent is the husband. The marriage of the parties to the writ petition was solemnized as per Hindu Rites and Customs sometime in June, 2003. It appears that the parties cold stay together peacefully for short time. In November, 2004 parties have separated. Since 2004 the petitioner is staying at her parents house at Pune. The respondent filed divorce petition before the Family Court, Bandra. The present petitioner moved an interim application bearing No.146/06 claiming interim relief in the nature of returning gold ornaments, clothes etc. and lastly a prayer was made for making available one of the flats owned by the respondent situated at Borivali bearing flat No.103. It is the case of the petitioner that the matrimonial house is a flat situated at Bandra whereas the flat at Borivali is available with the respondent which could be made available for residence of the present petitioner. The respondent did not deny before the Family Court that there are two flats. It is admitted that the

flat at Bandra is matrimonial house. However according to the petitioner though flat No.103 at Borivali was earlier standing in the name of the respondent the same came to be transferred by him in favour of his mother sometime in December, 2004. Perusal of the impugned order passed by the Family Court reveals that the Family Court has lost sight of the fact that there are two flats in existence and the claim for residential accommodation made by the petitioner/wife is in regard to flat situated at Borivli. Learned counsel for the petitioner points out that the petitioner never prayed for a relief to permit her to stay in matrimonial flat at Bandra. The Family Court has observed in the impugned order that as the petitioner is staying away from the matrimonial house from November 2004 prayer for permitting her to reside in the matrimonial house, during pendency of the proceedings, need not be granted. The order does not consider the case of the petitioner which seeks permission to make available the flat situated at Borivali. Hence the impugned order deserves to be quashed and set aside to the extent it relates to prayer (d) made by the petitioner in the interim application No.146/06. The Family Court shall after hearing parties pass an order afresh in accordance with law. Rule made absolute in above terms. Needless to mention that all contentions touching prayer clause (d) of the interim application No.146/06 are left open to be addressed before the Family Court.

29.8.07